

## **PREFERRED CUSTOMER ELECTRIC SERVICE AGREEMENT**

THIS PREFERRED CUSTOMER ELECTRIC SERVICE AGREEMENT is made and entered into this 10<sup>th</sup> day of November 199 by and between the City of Tallahassee, herein referred to as "City" and Leon County, herein referred to as "Leon County".

WHEREAS, Leon County desires to purchase and to receive from the City, and the City desires to provide to Leon County, on a long-term basis all of Leon County's requirements for electric service for all properties, facilities, structures, and premises owned, leased, or used by Leon County herein referred to as "Leon County's Premises", and located within the City's service area, and

WHEREAS, Leon County and the City acknowledge that the electric industry is in transition from a regulated industry to a market-based industry and that in the future electric generation services may be deregulated and subject to market risks; and

WHEREAS, it is in the mutual interest of the parties to continue and to enhance the cooperative relationship between them and, at the same time, recognize and accommodate the fiscal needs of each.

Now, therefore, the parties agree as follows:

### **1.0 Purchase of Electric Services.**

- 1.1 The City agrees to furnish and Leon County agrees to receive from the City and to pay for all of its electric service requirements, throughout the term of this Agreement, for all of Leon County's Premises located within the City's service area(s). Such service shall be furnished in accordance with Exhibit "A", which is attached hereto and by reference incorporated herein. A list by location of all electric services to Leon County's Premises, excluding non-demand metered accounts, is set forth in Exhibit "B", which is attached hereto and by reference incorporated herein. Leon County shall notify the City whenever additional service locations are established or whenever any service location reflected on Exhibit "B" is discontinued and, in such event, the City shall prepare and deliver to the Customer a revised Exhibit "B" which shall replace the prior version of that exhibit.

### **2.0 Term and Termination.**

- 2.1 Term. The Term of this Agreement shall commence with the first full billing cycle beginning after the later of the date executed by the City, or the date executed by Leon County, ("Effective Date"); and shall continue until the Scheduled Termination Date unless sooner terminated pursuant to the terms hereof.
- 2.2 Scheduled Termination Date. The Scheduled Termination Date shall be the tenth anniversary of the Effective Date; provided, however, that commencing on the seventh anniversary of the Effective Date, absent a prior notice to terminate, the Scheduled Termination Date shall be extended annually such that a three (3) year period is maintained between the current date and the Scheduled Termination Date. Leon County or the City may terminate this Agreement after having received or provided service under this Agreement for a period of five (5) years by providing the other party written notice of such termination no later than three (3) years prior to the effective date thereof.
- 2.3 Early Termination. Leon County may terminate this Agreement after the first five (5) years of the Term, and prior to the Scheduled Termination Date, as follows:
- 2.3.1 If Leon County elects to terminate this Agreement prior to the Scheduled Termination Date, Leon County shall deliver written notice of such intent to the City and shall be assessed, and shall pay to the City, a Reimbursement Fee. The Reimbursement Fee will be equal to the sum of all monthly discounts received by Leon County hereunder for the lesser of 36 months or the number of months from the effective date of such termination through the Scheduled Termination Date. This Reimbursement Fee shall be recovered from Leon County through elimination of the discount for the requisite number of months in accordance with the following formula:

RF = the sum of  $[MCD(i)], | i = 1 \text{ to } M$  where

RF = the Reimbursement Fee

MCD = the Monthly Customer Discount

M = the number of months of early termination;

$M = (ST - ED) * 12; M \leq 36$

ST = Scheduled Termination Date (in years)

ED = effective date of early termination (in years)

If this Agreement is terminated in accordance with its provisions with less than three (3) years' notice, then the amount of the Reimbursement Fee not recovered by elimination of the discount as described above shall be paid by Leon County prior to the effective date of termination.

2.3.2 If Leon County elects to terminate this Agreement with less than three (3) years prior written notice and prior to the Scheduled Termination Date, Leon County, in addition to the Reimbursement Fee specified above, shall be assessed, and shall pay to the City, as liquidated damages, a Cancellation Fee. The Cancellation Fee will be calculated by multiplying (a) the then current undiscounted monthly demand charge, times (b) Leon County's average monthly billing demand for the most recent twelve (12) months, times (c) a factor of one quarter (0.25), times (d) the lesser of (i) a factor of twenty-four (24) or (ii) the number of months of Early Termination. Computation of the Cancellation Fee will be made using the following formula:

$$CF = MDC * ABD * 0.25 * MM \text{ where}$$

CF = the Cancellation Fee

MDC = the current Monthly Demand Charge (undiscounted)

ABD = Leon County's Average Billing Demand  
(to be computed on a 12 month rolling average)

MM = the Monthly Multiplier, and is the lesser of M or 24 where  
M = months of early termination for the Reimbursement Fee

2.4 Additional Rights of Termination. In addition to the other rights of termination set forth in this Section 2.0, Leon County shall have the right to terminate this Agreement under the following circumstances:

2.4.1 During the first five (5) years of the Initial Term, Leon County shall have only those termination rights set forth in Section 5.0, and Section 7.10 below; and, during such five-year period, the rates and charges for electric services to Leon County shall not exceed the rates and charges therefore in effect on the Effective Date, net of the fuel component of such rates and charges.

2.4.2 To the extent Leon County cannot legally obtain electric service and capacity from an Alternative Provider prior to the end of such five-year period, the conditions set forth in Section 2.4.1 shall remain in effect until such option is legally available to Leon County.

2.4.3 Beginning on the first day of the second five (5) years of the Term, to the extent Leon County can legally obtain electric service and capacity from an Alternate Provider, Leon County may terminate the full service requirement set forth in Section 1.1 by providing written notice of such intent no less than eight (8) months prior to the proposed effective date of such termination. Such right, as set forth in the following subsections, is referred to as the Competitive Pricing Exit Clause.

2.4.3.1 To qualify under this Competitive Pricing Exit Clause, the total bundled cost for electric service, including applicable taxes and fees, delivered to Leon County's facilities by the Alternate Provider must be more than eight (8) percent below that which the City is then providing, and such offer must be valid for the remaining Term of this Agreement. For purposes of determining if an offer qualifies under this section, the actual load readings recorded by the City over the previous twelve (12) month period will be used.

2.4.3.2 If within five (5) months of receiving the termination notice, the City submits a counter proposal to Leon County offering to provide the total bundled cost for electric service, including applicable taxes and fees, delivered to Leon County facilities by the City for a cost of no more than six (6) percent greater than the total bundled cost for electric service (including applicable taxes and fees) offered by the Alternative Provider, then the termination notice pursuant to Section 2.4.3 will not take effect and the provisions of the City's counter proposal will take effect with the next billing cycle.

2.4.3.3 During the period in which the Competitive Pricing Exit Clause is in effect, if the City does not meet the conditions set forth in Section 2.4.3.2, this Agreement will terminate on the date indicated in the notice provided under Section 2.4.3. Upon termination, Leon County will be obligated to pay a Reimbursement Fee based on the lesser of 18 months or one-half the remaining months of the contract, and a Cancellation Fee calculated with the formula set forth in Section 2.3.2 adjusted to utilize a maximum of 18 months.

2.4.3.4 The term "Alternate Provider" used in this Section 2.4.3 shall mean an operating electric utility with sufficient generating capacity to meet the needs of Leon County on a firm basis, or an energy marketer licensed by the Federal Energy Regulatory Commission (FERC) to sell electric energy and capacity on a firm basis, or an entity approved by the Florida Public Service Commission (FPSC) to sell electric energy and capacity on a firm basis.

2.5 Neither this Agreement nor its termination provisions shall have any effect on Leon County's stranded cost obligations to the City, if any. However, to the extent that stranded cost recovery is allowed, if a Cancellation Fee is applicable to Leon County such fee shall be net of the allowed stranded cost recovery amount.

- 2.6 The giving of proper written notice and payment of all fees as provided in this Section shall be a condition precedent to the effectiveness of any termination under this Section 2.0.

3.0 Rates and Charges for Electric Service.

- 3.1 The discounts for accounts served under this Agreement are set forth in Exhibit A attached hereto entitled "Preferred Customer Electric Service Agreement Rate Schedule". The discounts (i) are applicable only to the electric rate schedules listed in Exhibit A, and successor rate designations, and are not applicable to special contracts between the City and Leon County and (ii) shall apply only for so long as Leon County remains a bundled customer of the City, regardless of whether the City voluntarily unbundles its rates as a marketing strategy or is required to unbundle such rates as a result of legislative or regulatory action. The discounts will not apply to any credits, penalties, service charges, surcharges, gross receipts tax, or other applicable taxes or charges including franchise fees.
- 3.2 The City will ensure that the rate discounts provided to Leon County under this Service Agreement shall not be less than those offered to other customers in any applicable electric rate class, or to other similarly situated public facilities or other commercial businesses of similar quantity of utility usage and load characteristics.

4.0 Special Provisions.

- 4.1 Consultation. The City will make its technical, business, and customer service representatives reasonably available to Leon County for consultation in regard to energy management and conservation, rate applications, electric facility problem solving, billing issues, and other related matters.
- 4.2 Summary Billing. Upon acceptance of this Agreement, Leon County is eligible to receive at no cost a summarized billing that contains a listing of all accounts receiving electric service from the City. This summary bill can be utilized by Leon County to facilitate a single payment to the City for multiple electric service accounts. Leon County shall notify the City in writing of its desire to receive this Summary Billing service, and this service will terminate concurrently with termination of this Agreement.
- 4.3 Fire Services Fee. The discounts offered in this Agreement are contingent upon Leon County's agreement to pay to the City the applicable Fire Services Fee in

accordance with City ordinance and resolution; provided, however, that subject to potential increase based on increased area of enclosed space, the amount of such annual fee shall not increase for each of the first five (5) years of the Term of this Agreement. For any year during the second five (5) years of such Term, the fee shall not be increased by more than four percent (4%) or Consumer Price Index, whichever is greater. Increases in the Fire Services Fee as a result of increases in the Tallahassee Fire Department budget attributable to changes in federal or state law shall not be considered in calculating any such annual increase in the Fire Services Fee. The provisions set forth in 4.3 are in no manner to be construed as representative of the County's position regarding the imposition of a fire services fee in the unincorporated area of the County. Section 4.3 is limited in scope to the County paying a fire services fee on County facilities located within a fire services fee area in accordance with City ordinance and resolution.

#### 5.0 Default.

In the event of a default by a party in the performance of any obligation on its part to be performed under this Agreement or upon the happening of any other event designated herein as an event of default, the other party to this Agreement shall have the right to declare a default and, subject to 6.0 below, terminate this Agreement.

#### 6.0 Resolution of Disputes.

No termination shall be effective nor shall any action to enforce any of the provisions of this Agreement be commenced until the party claiming to be aggrieved shall first have delivered to the other a written notice of default and its intention to terminate this Agreement or to initiate any other proceeding related to this Agreement. Such notice shall specify, in reasonable detail, the nature of the default. This notice shall be delivered at least sixty (60) days before the proposed date of termination or commencement of any proposed action, and the parties shall use this period to engage in good faith negotiations aimed at resolving the dispute without termination or other legal proceedings. This paragraph is not intended to limit or circumscribe the legal rights of any party thereto, but rather to ensure that the parties exhaust all avenues of seeking a mutually agreeable accommodation of their differences before terminating this Agreement or instituting legal proceedings. In any situation where the terms of this paragraph might affect the legal rights of any party hereto, the parties all stipulate to appropriate extension of limitation periods and other matters to eliminate any such potential effects.

#### 7.0 General Provisions.

- 7.1 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.
- 7.2 Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- 7.3 Modification. Agreement shall not be extended, changed or modified, except in writing duly executed by the parties hereto.
- 7.4 Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the parties hereto.
- 7.5 Assignment. Because of the unique nature of the relationship between the parties and the terms of this Agreement, neither party hereto shall have the right to assign this Agreement or any of its rights or responsibilities here under to any third party without the express written consent of the other party to this Agreement. Such consent shall not be unreasonably withheld.
- 7.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to discounts for electric service and capacity, and all prior agreements or agreements or arrangements between them with respect to such matters are superseded by this Agreement.
- 7.7 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 7.8 Ambiguity. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any party as the author hereof.
- 7.9 Public Body. It is expressly understood between the parties that the City is a duly incorporated municipal corporation of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by the City to claim such exemptions, privileges and immunities as may be provided to it by law.
- 7.10 Force Majeure. A party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the party affected, except where such party could have reasonably foreseen and reasonably avoided the occurrence, which materially and

adversely affects the performance by such party of its obligations under this Agreement. Such events shall include, but not be limited to, an act of God; disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

- 7.11 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given when delivered by certified United States mail, return receipt requested, and postage prepaid, or by hand delivery with signed acceptance to the parties as follows:

To City:                      City Manager  
                                    City Hall  
                                    300 South Adams Street  
                                    Tallahassee, FL 32301

With a copy to:            City Attorney  
                                    City Hall  
                                    300 South Adams Street  
                                    Tallahassee, FL 32301

To Customer:              County Administrator  
                                    Leon County Courthouse  
                                    301 S. Monroe Street  
                                    Tallahassee, FL 32301

With a copy to:            County Attorney  
                                    Leon County Courthouse  
                                    301 S. Monroe Street  
                                    Tallahassee, FL 32301

- 7.12 Cost(s) and Attorney Fees. In the event of litigation between the parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable costs and attorneys fees incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.

- 7.13 City Ordinances and Policies. Services under this Agreement shall be subject to all applicable ordinances and policies of the City; however, this Agreement is not intended to supersede any other agreements between the parties relating to utility services except agreements relating to discounts for electric service and capacity.



- 7.14 Severability. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, or part thereof, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.
- 7.15 Regulatory Approval. This Agreement shall be subject to, and the obligations of the parties shall be contingent upon, approval of this Agreement, as filed by the City, by the Florida Public Service Commission.
- 7.16 Signature Authority. Each party hereby represents that its execution, delivery, and performance of this Agreement have been duly authorized by all requisite action, that the Agreement has been duly and validly executed and delivered by the party, and that the Agreement constitutes the legal, valid, and binding obligation of the party enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

Attest: [Signature]  
Robert B. Inzer, Treasurer-Clerk

APPROVED AS TO FORM:  
[Signature]  
PATRICK E. HURLEY  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Attest:  
**DAVE LANG**  
Clerk County Court  
Leon County, Florida  
By: [Signature]  
D.C.

THE CITY OF TALLAHASSEE  
By: [Signature]  
Anita R. Favors, City Manager

LEON COUNTY  
By: [Signature]  
Jane G. Sauls  
\_\_\_\_\_  
Print or Type Name  
Vice Chairman  
\_\_\_\_\_  
Print or Type Title

APPROVED AS TO FORM  
LEON COUNTY ATTORNEY'S OFFICE  
Leon County, Florida  
By: [Signature]

Exhibit A

PREFERRED CUSTOMER  
ELECTRIC SERVICE AGREEMENT RATE SCHEDULE

Availability This schedule is available throughout the entire territory served by the City to eligible customers upon execution of the Preferred Customer Electric Service Agreement, designated as Tariff No. 990417-EM by the Florida Public Service Commission.

Character of Service Service under this schedule shall consist of rate discounts and other services for the benefit of Leon County as defined in the Preferred Customer Electric Service Agreement. This Agreement is for a ten (10) year term and the rate discounts shall be applied to all the eligible accounts of Leon County in the City's service territory. Service hereunder shall be subject to the Rules and Regulations of the City or any other regulatory body asserting jurisdiction over the City's electric rates, charges or service. Termination provisions and the associated exit fees are set forth in the Agreement. At the option of Leon County, the rate discount may be used for funding major electric equipment or utility-related infrastructure and site improvements at Leon County's service location(s). Election of the Preferred Customer Electric Service Agreement will preclude Leon County from receiving any other rate discounts offered by the City to other customers in addition to the discounts offered in the Agreement.

Monthly Rate Leon County shall receive a discount on its electric service as described below.

<u>Electric Rate Schedule<sup>[1]</sup></u>	<u>Discount Applied to the City's Standard Rate<sup>[2]</sup></u>
General Service Demand	5%
Curtable General Service Demand	5%
Interruptible General Service Demand	5%
Large General Service Demand	7%

[1] Current electric rate designation and successor rate designation.

[2] Discount applies to the then effective monthly rate. The discounts will not apply to any credits, penalties, service charges, surcharges, gross receipts tax or other applicable taxes or charges including franchise fees.

Special Provisions

It is recognized that the discounts are applied on a bundled service basis. The discounts (i) are applicable only to the electric rate schedules listed above and are not applicable to special contracts between the City and Leon County and (ii) shall apply only for so long as Leon County remains a bundled customer of the City, regardless of whether the City voluntarily unbundles its rates as a marketing strategy or is required to unbundle such rates as a result of legislative or regulatory action. The discounts will not apply to any credits, penalties, service charges, surcharges, gross receipts tax or other applicable taxes or charges including franchise fees.

**ORIGINAL EXHIBIT "B"**

**QUALIFYING ACCOUNTS FOR LEON COUNTY  
(Preferred Customer Electric Service Agreement)**

<b>CUSTOMER NAME</b>	<b>ACCT NUMBER</b>	<b>SERVICE ADDRESS</b>
LEON CO RES & DEV CTR	1003877011	2035 E G PAUL DIRAC DR G
BOARD OF COUNTY COMM LEON CO	1018794048	3401 W THARPE ST
BOARD OF COUNTY COMM LEON CO	1025539032	1920 THOMASVILLE RD
LEON COUNTY BOARD OF COMMISS	1025540033	1920 THOMASVILLE RD
LEON CO FACILITIES MGMT DIVI	1039076022	501 APLEYARD DR
BOARD OF COUNTY COMM LEON CO	1039103022	2929 MUNICIPAL WAY
LEON CO ROAD DEPT	1044371014	2110 MICCOSUKEE RD
BOARD OF COUNTY COMM LEON CO	1058785019	615 E PAUL RUSSELL
BOARD OF COUNTY COMM LEON CO	1074547024	301 S MONROE ST
BOARD OF COUNTY COMM LEON CO	1082760029	200 W PARK AVE
BOARD OF COUNTY COMM LEON CO	1093807024	1515 OLD BAINBRIDGE RD
LEON CO DETENTION FACILITY	1094982018	529 APLEYARD DR
LEON COUNTY SHERIFF-BOOT CAMP	1099645019	2829 MUNICIPAL WAY
BOARD OF COUNTY COMM LEON CO	1100325015	2825 HEALTH MUNICIPAL WAY HEALTH
LEON COUNTY SHERIFFS DEPT	1109611013	2825 SHERIFF MUNICIPAL WAY SHERIFF

Contract Number: 1638      Begin Date: 11/10/1999      End Date: 11/9/2006      Status: Active

Vendor/Contractor: CITY OF TALLAHASSEE

Attachment # 2  
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Title: PREFERRED CUSTOMER ELECTRIC SERVICE AGREEMENT

Division: COUNTY ADMINISTRATION      Division Contact: VINCENT LONG

Summary: CITY AGREES TO FURNISH AND COUNTY AGREES TO RECEIVE FROM CITY & PAY FOR ALL OF ITS ELECTRIC SERVICE REQUIREMENTS FOR ALL LEON CO. PREMISES LOCATED WITHN THE CITY'S SERVICE AREA(S). Note that the end date reflects the 7th anniversary date. This is the time by which we need to notify the City of our intent to terminate this agreement. If this does not apply, then the true end date of the original agreement is 11/9/09.